

You have presented a hypothetical situation in which a member of the Virginia General Assembly is an associate in a law firm. The firm was engaged by a client to provide legal services in connection with legislation which was introduced during the past session, which legislation is very significant to business interests of the client. The representation includes drafting proposed legislation for the upcoming session.

Further, you indicate that no lobbying activities of any kind have been undertaken by members of the firm in support of similar legislation and that the associate/legislator voted against a similar bill during the preceding session. Finally, you indicate that the firm believes strongly that the associate/legislator should abstain from voting on the legislation being drafted by the firm on behalf of the client in order to avoid any appearance of impropriety or voting against a client's interest on a substantial issue affecting that client.

You have asked the committee to opine whether, under the facts of the inquiry, it is ethically permissible under the Code of Professional Responsibility for the associate/legislator to cast a vote when the legislation comes to the floor of the General Assembly.

The appropriate and controlling disciplinary rules relative to your inquiry are:

DR:9-101(C) which prohibits a lawyer from stating or implying that he is able to influence improperly or upon irrelevant grounds any tribunal, legislative body, or public official;

DR:8-101(A)(1) which, in pertinent part, exhorts a lawyer who holds public office not to use his public position to obtain, or attempt to obtain, a special advantage in legislative matters for a client under circumstances where he knows or it is obvious that such action is not in the public interest; and

DR:7-101 which requires that a lawyer not intentionally (1) fail to seek the lawful objectives of his client through reasonably available means permitted by law and the Disciplinary Rules, (2) fail to carry out a contract of employment entered into with a client for professional services, or (3) prejudice or damage his client during the course of the professional relationship.

Further, EC:8-8 encourages lawyers who are public officers to avoid engaging in activities in which the lawyer's personal or professional interests are or foreseeably may be in conflict with his official duties; and EC:7-1 urges that the duty of a lawyer, both to his client and to the legal system, is to represent his client zealously within the bounds of the law.

Although lobbying by any member of the firm on behalf of the client would be improper while the associate/legislator hold public office [See LE Op. 1278], under the facts you present, the committee is cognizant that no similar per se impropriety arises through the mere representation of the client whose business is impacted by legislation under consideration. Thus, provided that neither the firm nor the associate/legislator leads

the client to believe that the legislative body will be influenced improperly, the committee is of the opinion that the associate/legislator's voting on the matter before the legislature would not create an appearance of impropriety which would be violative of DR:9-101(C).

The committee is of the view that, in order to constitute misconduct, the plain language of DR:8-101(A)(1) requires that the associate/legislator attempt to secure a "special advantage" which would not be "in the public interest". As noted by the ABA Committee on Ethics and Professional Responsibility, "special advantage" refers to a direct and peculiar advantage [for a specific client] and . . . action [which is] clearly inimical to the best interests of the public as a whole. Informal Op. 1182 (December 5, 1971). Thus, the committee is of the opinion that the legislator's voting on the matter would not violate the plain language of DR:8-101(A)(1) unless some special benefit would accrue to the firm's client which would be beyond whatever benefit (or detriment) would accrue to the public at large.

Finally, the committee opines that a public official's carrying out of his responsibility to his constituency does not in and of itself violate his firm's responsibility to zealously represent its client whose business interest may be negatively impacted by the legislator's official actions. See DR:7-101.

The committee notes that its opinion is predicated solely on the Virginia Code of Professional Responsibility and does not attempt to address any requirements of the General Assembly Conflict of Interests Act, Va. Code § 2.1-639.30 et seq., the Rules of the Virginia House of Delegates as adopted by the House, January 12, 1994, or lawyer/legislator duties which fall outside of the attorney/client relationship.

Committee Opinion
November 29, 1994